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Subject: 404g weekly update

Mike, per your direction, I am including a bit on various 404(g) issues so you and Mindy can inform John G. I am copying the OWCD reg team so they can add anything they feel is relevant, some on the team only have interest in the first bullet, but sending one email to all. - Kathy.

404(g)

- Rulemaking Upcoming meetings:
 - Whiteboard session on partial assumption with DR – request in process, targeting late March.
 - Staff level engagement with USACE and Army on Assumable/Retained Waters – discussion to focus on tying up loose ends from recommendation and process necessary to include in regulation vs memo to the field. Will loop back with DR after meeting. Targeting Late April early May for face to face meeting.
 - ESA –
 - David F. has staff revisions to ESA 5-way MOA in FL based upon USFWS comments; he will send to USFWS. Next steps will be to reach out individually to NMFS, USACE, and FDEP.
 - Is there a meeting on ESA being scheduled with AZ and OGC and OW? If so, when.
 - Assumption Session at ASWM April 4th. EPA staff to facilitate panel of states (FL, MD, MN, NE and maybe AZ).
 - OST has not yet scheduled meeting with OMB to get concurrence on approach to EA.

- State efforts

- MI

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Ex. 5 Deliberative Process (DP)

- AZ – October 2020; looking to shorten timeline by 6 months. Region has been trying to work with the state, not getting much traction.
 - OR – (2022) Hearing on legislation held 3/19/19; legislation to allow for partial assumption, if regs changed.
 - MN – (2021) Legislation introduced to pursue assumption.
 - IN – quiet.
 - NE – Has not reached out to Regional staff, may be talking to RA.
 - FL

- FDEP staff indicating implementing regulations will not likely be finalized until Fall 2019; still awaiting Gov. direction prior to publishing rule for comment, FDEP anticipates lawsuit on the rule which will delay finalization.
- FDEP-USACE MOA – EPA shared suggested revisions to FDEP and USACE in early November. The USACE made edits/comments to EPA suggestions and shared those with FDEP. FDEP staff shared USACE's comments with EPA on March 14, 2019 (attached). The internal Florida 404 assumption team has reviewed those edits and summarizes edits of interest below. The team is happy to provide management with additional input and recommendations regarding the USACE edits if requested and is willing to assist with next steps if asked by the state or R4 management.
- Edits of Interest:

• **Ex. 5 Deliberative Process (DP)**

- Lawsuits
 - Menominee Lawsuit - brief to the court; deadline extended to 3/26/19.
 - Criminal Liability – still tracking ID case.

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